UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

US EPA RECORDS CENTER REGION 5
515571

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its Attorney General Hubert H. Humphrey, III, its Department of Health, and its Pollution Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION HOUSING AND REDEVELOPMENT AUTHORITY OF ST. LOUIS PARK; OAK PARK VILLAGE ASSOCIATES; RUSTIC OAKS CONDOMINUM INC.; and PHILIP'S INVESTMENT CO.,

Defendants.

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Civil No. 4-80-469

REPLY STATEMENT OF THE UNITED STATES IN SUPPORT OF ITS MOTION TO QUASH REILLY TAR & CHEMICAL CORPORATION'S DEMAND FOR A JURY TRIAL

1. Restitution is an Equitable Remedy.

Defendant Reilly Tar & Chemical Corporation ("Reilly") argues that the United States' claim for restitution of the monies expended under section 107(a)(1)(A) & (2)(A) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") is not an equitable claim because it is a claim for money. As the Supreme Court has stated in Curtis v. Loether, 415 U.S. 189, 194 (1974), not every claim for monetary relief must be "legal" in nature. Indeed, the Supreme Court cited its own decision in Porter v. Warner Holding Co., 328 U.S. 395 (1946) as one in which equitable monetary relief was granted, under the doctrine of restitution.*

Reilly argues that the distinction between a legal claim for damages and an equitable claim for restitution, such as the United States seeks here, is a "semantic" distinction which should be disregarded. This distinction was not a mere semantic difference to the Supreme Court in Porter v. Warner Holding Co., supra, which stated that restitution "differs greatly from damages", 328 U.S. at 402, or to the Fourth Circuit in United States v. Long, 537 F.2d 1151, 1153-54 (4th Cir. 1975), cert. denied, 429 U.S. 871 (1976), which held that "the equitable remedy of restitution [is] distinguished from damages which are properly recoverable in an action at law," and did not carry the right to a jury trial. The same distinction was important to the Seventh

* The Supreme Court in Curtis also discussed the numerous cases in which equitable monetary relief has been granted in the form of backpay under Title VII of the Civil Rights Act of 1964.

Circuit in Rogers v. Loether, 167 F.2d 1110, 1121 (7th Cir. 1972) aff'd sub nom. Curtis v. Loether, 415 U.S. 189 (1974), where it concluded that "[r]estitutionn is clearly an equitable remedy, not entitling a party to a jury trial."

In its initial statement, the United States demonstrated how its claim under CERCLA § 107 was a claim for restitution by citing Wyandotte Transportation Co. v. United States, 389 U.S. 191, 204 (1967) and United States v. Boyd, 520 F. 2d 642, 644-45 (6th Cir. 1975), cert. denied, 423 U.S. 1050 (1976). In those cases, the courts held that the United States claims to recover monies expended to respond to a danger to public health and safety created by the defendant was based on the economic assistance doctrine embodied in Restatement of Restitution § 115. Reilly now argues that this doctrine is in fact a doctrine a law, not in equity. In support of this argument, Reilly relies almost exclusively on United States v. Consolidated Edison Co., 580 F. 2d 1122 (2d Cir. 1978). Reilly's reliance on this case is incongruous, because the Second Circuit in the Consolidated Edison case described the doctrine of Restatement of Restitution § 115 as "a more general equitable doctrine." 580 F.2d at 1130 (emphasis supplied). Thus, rather than proving that the United States' claim for restitution is legal, the Consolidated Edison case demonstrates that it is an equitable claim.*

* The Consolidated Edison court in calculating the amount of the United States' recovery does use the word "damages." However, the context shows that the word was used in the sense of the amount of the recovery, not to refer to the nature of the claim. (The case did not involve a jury trial issue.) In contrast, the Consolidated Edison court described the underlying doctrine as equitable in rejecting defendant's argument that it only applied to admiralty.

Accordingly, the Consolidated Edison case is consistent with the Supreme Court's decision in Porter v. Warner Holding Co., supra, the Fourth Circuit's decision in United States v. Long, supra, and the Seventh Circuit's decision in Rogers v. Loether, supra, in holding that restitution is an equitable remedy.

2. The Risk of Collateral Estoppel Does Not Entitle to a Jury Trial.

Reilly argues that it should be entitled to a jury trial against the United States because a decision by the court on the United States' equitable claims may have a collateral estoppel effect on the legal claims raised by the intervening plaintiffs before a jury trial can be completed. But Reilly is incorrect in arguing that the application of collateral estoppel under these circumstances would in any way violate the Seventh Amendment. Indeed, the Supreme Court, in the very case cited by Reilly, Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979), refuted Reilly's arguments.

In Parklane Hosiery, the defendants had previously lost in an equitable action for an injunction brought by the Securfities and Exchange Commission ("SEC"). They were then sued for damages by private plaintiffs, who argued that the defendant were precluded from relitigating the same issues in an action at law by the doctrine of collateral estoppel. The defendants argued that to permit collateral estoppel to apply in these circumstances would deprive them of their rights to a jury trial under the Seventh Amendment in the legal action.

The Supreme Court rejected that argument and held that a decision by a court against the defendant on equitable claim could have a collateral estoppel effect on a legal claim brought by another plaintiff against the same defendant without violating the Seventh Amendment.

The Supreme Court in Parklane Hosiery refuted the same argument made here by Reilly that Beacon Theatres v. Westover, 359 U.S. 500 (1959) and Dairy Queen, Inc. v. Wood, 389 U.S. 469 (1962) are applicable to situations where different plaintiffs raised separate legal and equitable claims against the same defendant. As the Parklane Hosiery Court stated,

> "Both Beacon Theatres and Dairy Queen recognize that there might be situations in which the Court could proceed to resolve the equitable claim first even though the results might be dispositive of the issues involved in the legal claim." 439 U.S. at 335, quoting Katchen v. Landy, 382 U.S. 323, 339 (1966).

In the next sentence, the Court went on to state that "an equitable determination can have collateral-estoppel effect in a subsequent legal action and that this estoppel does not violate the Seventh Amendment." 439 U.S. at 335. The Court ultimately concluded that "the law of collateral estoppel forecloses the [defendants] from relitigation the factual issues determined against them in the SEC action, nothing in the Seventh Amendment dictates a different result." 439 U.S. at 337.

Just as in the Parklane Hosiery case, if a decision in favor of the United States on its purely equitable claims

is rendered prior to a jury verdict on the legal claims of the intervening plaintiffs, that decision, may have a collateral effect, but that effect wold not violate the Seventh Amendment. Thus, the risk of collateral estoppel on the intervenors 'claims does not entitle Reilly to a jury trial against the United States.

Moreover, as a practical matter,the risk of collateral estoppel can be avoided by timing simultaneously the release of the court's judgment on the United States' claims and the verdict on the intervenors' claims.

CONCLUSION

For the foregoing reasons and those stated in the United States' initial statement of points and authorities, the United States' motion to quash Reilly's jury demand should be granted and the United States' claims against Reilly should be tried to the court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On the 3rd and 4th day of May 1983, I caused to be served copies of the foregoing formal papers on the following counsel:

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